



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of R.M.H.,  
Police Officer (S9999A),  
Union Township

CSC Docket No. 2021-927

Medical Review Panel Appeal

**ISSUED: NOVEMBER 1, 2021 (BS)**

R.M.D., represented by Craig S. Gumpel, Esq., appeals his rejection as a Police Officer candidate by Union Township and its request to remove his name from the eligible list for Police Officer (S9999A), Union Township, on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on July 15, 2021, which rendered its Report and Recommendation on July 15, 2021. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Robert Kanen (evaluator on behalf of the appointing authority) conducted a psychological evaluation of the appellant and characterized the appellant as having above average range in cognitive ability but was an underachiever. On the personality testing, the appellant revealed that he got bored easily and that he demands respect. When he feels he is being disrespected, he gets irritated. This raised concerns with Dr. Kanen about the appellant's ability to deal with the public, especially when he perceives that he is being disrespected. The personality testing also revealed that the appellant had some difficulty in establishing and maintaining positive relationships and that he may have a limited world view. Furthermore, Dr. Kanen indicated that the testing suggested that the appellant may be prone to

periodic impulsivity and feelings of restlessness. The appellant may be experiencing some levels of depression and have below average feelings of self-worth. Moreover, Dr. Kanen noted that, when compared to other law enforcement candidates, the appellant was elevated on the substance abuse scale, the social difficulty scale, and the depressed and elevated mood scales. The appellant fell into the category of not likely to recommend for employment in a law enforcement/public safety capacity. Dr. Kanen opined that, at the appellant's current level of functioning, the appellant was at risk of having difficulties dealing with the demands of a law enforcement officer, including working appropriately and competently with the public. Dr. Kanen concluded that the appellant was not psychologically suitable for the subject position and did not recommend him for appointment.

The Panel's report also indicates that Dr. Daniel B. Gollin (evaluator on behalf of the appellant) conducted a psychological/psychiatric evaluation of the appellant which included a detailed review of Dr. Kanen's report and all testing and documentation he relied upon in arriving at his conclusions about the appellant's psychological suitability. Dr. Gollin also conducted a prolonged interview of the appellant for the purpose of clinical examination and the gathering of a detailed personal history. Dr. Gollin concluded that, when taken in its totality, the findings fail to objectively support Dr. Kanen's conclusions. It was Dr. Gollin's "professional judgment without reservation," based on an approximately 130-minute interview, and all of the documentation supplied by Dr. Kanen, that the appellant was psychologically and psychiatrically fit to serve as a Police Officer.

In its conclusion, the Panel set forth that the appellant currently works as a communications operator<sup>1</sup> for Union Township which involves dispatching emergencies. The appellant reported that he completed his 90-day probationary period but had yet to receive an evaluation. Prior to this, he worked as a lifeguard and cashier for about five years. He changed employment for a career path that he wanted to follow. The appellant denied having any driver's license suspensions. However, he had one speeding ticket in 2016 and was involved in two motor vehicle accidents for which he was at fault, the last occurring in 2016. The appellant also reported experimenting with marijuana in high school but denied any current usage. Additionally, the appellant denied any excessive use of alcohol, citing that use of alcohol could impair his ability to pursue a career in law enforcement and claimed that he drank only on special occasions. Moreover, the appellant denied any difficulties with alcohol in the past and this was consistent with the documentation provided to the Panel. Regarding the appellant's need to be respected, he informed the Panel that, while he was bothered by disrespect, there was no need for him to respond. The Panel noted that there were no verbal or physical altercations as an

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<sup>1</sup> It is not clear from the record whether the appellant's employment with Union Township is a Civil Service position, as his employment is not recorded in the County and Municipal Personnel System (CAMPS). If the appellant serves in a Civil Service capacity, the appointing authority is directed to record his employment in CAMPS.

adult within the record. Accordingly, the Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicated that the candidate was psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should not be upheld. The Panel collectively concluded that there were no grounds to remove the appellant from the subject eligible list due to a lack of psychological fitness and that his name should be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Robert J. Merryman, Esq., asserts that the Panel failed to adequately address the concerns expressed in Dr. Kanen's report, which relied on a number of assessments specifically geared toward public safety occupations and raised serious concerns related to the appellant's lack of motivation in terms of both education and work experience, elevated ratings for substance abuse, testing suggesting a limited world view, and his reporting of a tendency to overreact when he becomes excited. Of particular concern was the appellant's self-reporting that he becomes irritated when he perceives that he is being disrespected. The appointing authority submits that Dr. Kanen properly reported that the ability to react appropriately when disrespected by a member of the public was a critical aspect of law enforcement. The appointing authority argues that the conclusions of Dr. Gollin were based solely on an interview with the appellant and selected letters of recommendation provided by the appellant, as Dr. Gollin administered no tests or assessments to support his opinion. The appointing authority maintains that the Panel failed to connect the appellant's limited, uneven education and work history to any of the concerns raised by Dr. Kanen, which were ignored by the Panel in its acceptance of the opinion of Dr. Gollin. The appointing authority insists that it met its burden of proof that the appellant is psychologically unfit to serve as a Police Officer and that his removal from the subject eligible list should be upheld. Alternatively, it contends that an independent psychological assessment of the appellant should be authorized.

In his cross exceptions, the appellant argues that the concerns of Dr. Kanen were addressed at length by Dr. Gollin. Dr. Gollin elicited details regarding the appellant's education, mental health, and employment history which were not provided in the appointing authority's submission. Further, and importantly, the appellant has been employed by the appointing authority's Police Department as a dispatcher for the past year which is a highly stressful and a critical civilian position dealing with the public and the appellant has an unblemished record while serving in this capacity. The appellant contends that Dr. Gollin specifically addressed the personality testing performed by Dr. Kanen, finding that the facts of the matter did not support Dr. Kanen's characterization of him as a "frequent alcohol abuser and/or drug user." Dr. Gollin rebutted the summary provided by Dr. Kanen, and instead found positive results in the testing which were in direct contrast to Dr. Kanen's conclusions. The appellant maintains that the Panel's Report and Recommendation

were well reasoned and nothing in the record supports the appointing authority's allegation that "legitimate and serious concerns" were ignored by the Panel. The appellant respectfully requests that his name be restored to the subject eligible list.

## CONCLUSION

The Job Specification for the title of Police Officer is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Civil Service Commission (Commission) has reviewed the Report and Recommendation of the Panel and the Job Specification for Police Officer and agrees with the Panel's assessment of the appellant. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. In the instant matter, the Commission finds the exceptions presented by the appointing authority not to be persuasive.

In that regard, as noted above, the Panel has reviewed the recommendations and conclusions of the evaluators and did not ignore the concerns raised by Dr. Kanen. Rather, the appellant's behavioral record does not support the concerns that he lacks motivation, has a propensity for substance abuse, or may have difficulty dealing with the public that would psychologically disqualify him for a Police Officer position. The appointing authority does not dispute the appellant's current and self-reported unblemished employment with Union Township and that he deals with the

public in a position that involves emergencies. The Panel also did not find that the appellant has engaged in verbal or physical altercations which, if he had a history of such occurrences, may lend support to the finding that the appellant is bothered by disrespect and would act on that. There is also no pattern of alcohol abuse. Therefore, the Commission defers to and agrees with the Panel's expert opinion.

Regarding the appointing authority's request for an independent psychological evaluation, the Commission emphasizes that the Panel consists of qualified and licensed Psychologists and a Psychiatrist who have already reviewed the raw test data, reports and opinions of Drs. Kanen and Gollin and rendered its own expert opinion in this matter. Based on the foregoing, there is not a sufficient basis to refer the appellant for such an evaluation. The Commission, however, is mindful that any potential behavioral or performance issues that are raised regarding the appellant's employment suitability can be addressed during his working test period as a Police Officer.

Therefore, having considered the record, including the Job Specification, and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's Report and Recommendation.

### **ORDER**

The Commission finds that the appointing authority has not met its burden of proof that R.M.H. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated. A federal law, the Americans with Disabilities Act (ADA), 42 U.S.C.A. §12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also* the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (October 10, 1995). That offer having been made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to August 14, 2020, the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27<sup>TH</sup> DAY OF OCTOBER, 2021



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